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ARTICLE I.

ON THE INFLICTION OF DEATH AS A PUNISHMENT.

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PUBLIC opinion is divided, as to the expediency of the punishment of *Death*. Some christian denominations, in a body, disapprove of it, and many persons may be found in all classes of the community, who are unsettled in their opinions of its expediency and justice. Many refuse, altogether, to aid in the trial of capital offences. And where the scruples of jurors are less distinct and operative, there may often be detected in their verdict, a strong reluctance to convict a culprit of an offence which must be expiated upon the gallows.

In such cases the discretion of judging the *law*, as well as the *fact*, which is given to juries, often contravenes the advisory opinion of the court, and is exerted in a manner not easily reconcileable with the rules of evidence. The court is not always able to impress upon the minds of the jury a clear distinction between their duty as triers of a *fact*, upon evidence, and the infliction of a penalty by the *law*, upon a convicted felon. They seem to feel and act as if the sentence of death were a part of their verdict. They do not steadily keep in

view the limits of their own agency ; which is, merely to determine the fact of the offence and its description. Other departments of our judicial tribunals are required to pronounce the penalty fixed by law upon the convict and to enforce this penalty by the regular ministerial agents. These are nice legal distinctions, not altogether satisfactory to a scrupulous mind ; and so long as it is made the duty of the jury, not only to determine what facts are proved, but also whether those facts constitute a capital offence, they must feel themselves to be directly connected with the question of life and death, and will shrink from sustaining a responsibility so solemn.

This is a bad state of things. Penal laws should either be resolutely enforced or repealed. An indirect contravention of the statute, by calling murder manslaughter, and misconstruing the meaning of well defined terms, to screen an offender, because the penalty for his offence is repulsively severe, involves a serious question of conscience with a juror who has taken an oath to decide according to the *law* and evidence. The public judgment ought to be clear ; it ought fully to sustain every penal enactment. A repeal of the law itself is far preferable to its practical nullification by some quibble or evasion.

It is important, therefore, that public opinion on this subject should be clear and settled ; for no penal enactment can be long efficient, in this country, unless its justice is acknowledged by the public voice.

If the infliction of death be a suitable and expedient penalty for the offences to which it is now attached by our laws, let the community strongly sustain judicial tribunals in the infliction. Let jurors not shrink from boldly applying the established rules of the law to offenders, strike where they may. Let no ill-timed weakness of feeling, or censurable spirit of mercy, blunt the edge of the sword of justice, and shield from his just deserts the arraigned felon.

But if, on the contrary, the shrinking policy of juries be founded in the instinctive promptings of true compassion ; if the laws are not executed, because they are palpably at variance with the sentiments of natural justice and the dictates of

innate truth, let them be erased from the statute book and their places supplied with more practicable institutes.

For our own part, having come to the conclusion that capital punishments are wrong, with no little reflection and painstaking, we ask a candid estimate of the reasons we shall briefly offer for the opinion we hold.

In the discussion of this question, certain principles have heretofore been so thoroughly established as not now to need revision.

We concede the *right*, in its fullest extent, of the civil authority, to inflict any punishment which may be expedient. We also believe that the question is untouched by any positive injunctions in the Old or New Testament. If the frequency of death as a punishment, in the Jewish law, sanctions its adoption by modern legislators; on the other hand the whole spirit of the christian dispensation guides christian law-makers to the mildest inflictions and the most merciful enactments.

The question being thus opened, our first remark is, that penalties in general, and death in particular, appear to have been established in many cases, with a wrong aim, and from a misconception of the true grounds of human punishment.

Legislators have had three objects in view :

1. Retribution,
2. Reformation of the offender,
3. Security to the community, both present and future.

It is not perhaps generally felt that *retribution* enters largely into penal legislation. The penalty is generally regulated, at least in this country, by the intrinsic malignity of the offence. We often find ourselves admitting the necessity of severe punishments on the ground that the offenders *deserve* them.

But this is a wrong principle to be guided by. Retributive justice is not a function of human institutions ! revenge is not the duty of human forms of justice. We have no *right* to punish any man because he is bad ; it is only when his guilt, or depravity endangers the security of others that he becomes amenable to human laws. The sin against the Holy Ghost

is marked in the New Testament as unpardonable. By that code it is worse than murder. But human institutions do not feel its bad effects directly, and are not therefore authorized to punish it. Reform and self-protection are the only legitimate grounds of punishment. The law of retaliation would demand an eye for an eye and a tooth for a tooth; but the law of Christianity and the principles of enlightened legislation forbid us to render evil for evil. Hence the rule which in earthly governments measures the punishment by the heinous nature of the offence, is exploded alike by reason and revelation. We have no right to punish the offender for the mere fact of his guilt: he must atone for the violation of the moral law at another tribunal. The duty of man regards only the present welfare, and any punishment inflicted on other grounds than for the protection of the community and the benefit of the offender, flows from a reprehensible spirit of revenge. Still, it is often urged that the murderer has incurred a penalty and deserves to be punished. This may be true, but vengeance belongs not to man. It is impossible for earthly tribunals accurately to estimate the guilt or adjust the penalty. Least of all should they inflict *death* as a punishment, the consequences of which to the sufferer, they can never exactly appreciate. Suppose that a secret murderer, by some miracle, should really become a good man. Ought he to be put to death? Not for example sake, for the offence was *secret*; nor for reformation. Yet he forfeited his life; he violated the rights of the community and incurred the penalty, and by the principles of retributive justice, he should be put to death. But plainly not so, by the interests of society.

Revenge, then, is never the proper object of penal legislation. Laws should be passionless: the public ought not to hate. Its feelings towards an offending member should be paternal. A father may be grieved: he may find punishment necessary for security or correction, but he can never properly entertain the feeling of revenge towards a child, or visit him with retributive justice.

Thus in penal legislation, it is never necessary to inquire

what the offender *deserves*. The eternal law connecting pain with sin, as effect is connected with its cause, will both determine and punish the real guilt. The only rule for *human* law-givers is, the welfare of the community and of the criminal. Punishment has no reference to the past, but to the future. Its object is not to inflict suffering on the criminal because he is guilty, but to protect the community from further aggression, and if possible to reform the offender. The crime has been committed: human legislation cannot annihilate the evil deed, oftentimes cannot alleviate it. Nor have tribunals the wisdom to detect the exact measure of guilt, or the ability to inflict the exact measure of punishment. They have no right to interfere except to prevent the recurrence of crime, or, it may be, to benefit the offender.

The neglect of these considerations leaves law-makers oftentimes to act under the influence of wrong feelings. A virtuous hatred of the offence dictates severity towards the offender. The penalty of the law is adjusted, not coolly by the interests of the community, but angrily, by the hatefulness of the felon. The legislators do not keep in view what the community requires, but what the culprit deserves. They become avengers instead of protectors. Hatred of the offender supersedes anxiety for the public weal, and they exterminate in anger, where mercy or lenity might better serve the ends of human justice.

By such feelings of revenge are dictated the passionate appeals to a jury which are sometimes resorted to by counsel in capital trials. Where discrimination and cool judgment are wanted, is it right to awaken revenge? Should the administrators of the law be gorged with personal hatred or stimulated to harsh deeds by angry passion? Even in the most atrocious cases, is it right for the ministers of public justice to aim at awakening in the breasts of the jury, a ferocious hatred against the culprit? A kindred tone occasionally may be noticed in the sentences of our courts for capital offences. Instead of treating the prisoner as an unfortunate wretch about to be deprived of all earthly possessions by the awful hand of justice, the court not unfrequently assumes a tone of denunciation, in-

human and painful to the man of feeling. The crime is depicted with exaggerations, the motives of the criminal are dwelt upon, and every circumstance portrayed which can aggravate the horrors of the prisoner's situation, or harrow up the feelings of the community. This is cruel and unnecessary. Humanity and mercy should ever soften the rigors of justice, so far as the safety of the community will permit ; and it is far more consistent with the dictates of christian charity to treat even the convicted felon, as not only criminal, but unfortunate.

Let the feeling of VENGEANCE be dismissed, then, from the heart of the legislator, and from the hearts of the community. Let it cease to be an element in our penal laws, our courts of justice, or our own private views of the wretched criminal. Let the attention be fixed wholly upon the real ends of punishment ; which are security and reformation.

By the infliction of death, the interests of the criminal are at once sacrificed. Reformation is put out of the case, though it cannot be denied to be an important end of penal justice. Every criminal, however depraved, has rights ; and there exist corresponding duties to him which are imperative upon the community. His preparation for death, nay, even his temporal comfort, is not to be disregarded or wantonly sacrificed. It is true, that these interests are less important than the welfare of community. But they should be preserved to him so far as may be consistent with that welfare. The law should aim to deprive the culprit of nothing which the necessary protection of society does not require. And if means for the reformation and comfort of the most abandoned criminal, may be combined with the best public good, they ought, by every principle of justice and humanity, to be adopted. The infliction of a single pang which the welfare of the community does not require, is cruelty.

It is justly a cause of regret to the reflecting mind, that the punishment of death so completely sacrifices all the interests of the convict, and banishes the hope of reformation. The sudden compunctions manifested on the near approach of death, afford little alleviation of this regret. There is no opportunity

to test their sincerity or to prove their efficacy. Repentance in prison, is, at the best, an equivocal indication of a change of disposition. It will hardly be denied that the irreparable injury done to the convict by hurrying him out of existence, is a terrible evil, the infliction of which involves the greatest responsibility. No estimate can possibly be formed of the awful consequences which may ensue. Some appreciation may be made of all other punishments : torture, maiming, confinement, have obvious effects which are open, in all their extent, to human observation. Death is not so : we cannot know even the severity of the pang which accompanies it ; much less can we form any opinion of the future consequences. It may devolve sufferings upon the wretched victim forever, the intensity and fearfulness of which the human mind could neither comprehend nor imagine. The responsibility of its infliction, then, is immense : it is inconceivable. There is but one ground on which it can be justified, and that is *necessity*. If the security of the community renders the infliction of death *absolutely necessary*, on this ground, perhaps, but certainly on *no other*, can it be defended. Let us turn, then, to the consideration of this justification, and examine the extent of this necessity.

The infliction of death, as a punishment, may conduce to the security of the community in two ways, viz. :

1. By taking from the offender the power of further injury.
2. By deterring others from crime through the fear of punishment, and by exciting their abhorrence of the offence.

These two heads embrace every effect of capital punishment.

The first object, we may safely say, can be *as effectually accomplished* by other means, as by death. The physical power is in the hands of the community, and may readily be applied to the perfect execution of this end. To seclude a felon *entirely* from society, and take away every hope of escape on his part, or fear of it on the part of the community, is within the power of the architect and civil engineer. It is perfectly undeniable, that cells may be formed and prisons constructed, which shall be perfect and eternal barriers to the utmost ingenuity and strength of any human being. A little reflection

must, we think, convince any intelligent man of the truth of this assertion. Our prisons are by no means so strong and secure as they might easily be made. No limit can be fixed to the perfection they may be brought to, in this particular. But at present, few escapes occur. It would be easy to render them physically impossible. A few blocks of stone and a little mortar may as effectually separate the strongest culprit from the community, as the grave itself. The strength and ingenuity of man confine the strongest animals. Culprits, before conviction, and after conviction before execution, are kept without difficulty. We grant it may involve some trouble and expense; but we shall not yield to that argument when the life of a fellow-man is at stake. Hanging is, indeed, economical; but that is not a fact which will have any weight in its favour. The interests of the prisoner may rightly demand some sacrifices from the community. Trouble and expense, and even some degree of hazard, ought all to be cheerfully incurred, rather than the responsibility of destroying life. We are sure no humane man will deny this position. And if the criminal can be as effectually secured from further crime by confinement, as by death itself, so far as this object is concerned, the infliction of death is neither necessary nor justifiable.

But let us pass to the second class of benefits proposed by the infliction of capital punishments, namely, their tendency to prevent crime by the terror of example, and the abhorrence of guilt which they are supposed to excite.

This is the strong ground of the advocates of the punishment of death. They contend that it is more terrible than any other penalty, and hence, that its influence is greater in the prevention of crime. There are other punishments more horrid and cruel than death, but they are not tolerated by the state of the public mind. Death is the utmost limit of severity to which the humanity of the age will assent.

We are prepared fully to admit, that, to a well-balanced mind, the punishment of death is more terrible than any substitute we can propose. Confinement for life in a solitary cell,

on the most meagre fare, would be preferred by any reasonable being, to a violent and ignominious death.

But it is not upon reasonable and well-balanced minds that the example is required to operate. And we think the influence of its terrors has been greatly overrated by legislators and speculative reasoners, because they have reasoned from their own feelings, and have not sufficiently noticed the very different feelings of the class of persons upon whom punishments are intended to operate as a terror.

A late writer on penal legislation,* with great ingenuity and sufficient accuracy divides mankind into three classes, as follows :

“First ; those whose animal appetites or propensities are so powerful as to overbalance the restraining force of their moral and intellectual faculties, and, like thorns, choke any good seed sown in them. Beings of this constitution of mind are under the dominion of strong lusts, violent passions, and intense selfishness. Their impressions of moral duty are so weak as to offer no restraint to the gratification of their selfishness, at any cost of property, limb, or life, to those, no matter how unoffending, who stand in their way ; while, in most of them, a limited intellect has obscure views of the real nature of things, confused perceptions of consequences, overweening confidence in their own power of concealment, evasion, and escape, total blindness to the guilt of their actions, a fixed rejection, in their own case, of all idea of retribution :—on the contrary, a persuasion that all restraint imposed on themselves, is the unwarrantable act of the strongest ; and, finally, the feeblest powers of controlling their passions, even when they do see the fatal consequences of yielding to their sway. Any better endowment of intellect in this class, is always perverted to the purposes of crime ; hence, expert, plan-laying thieves, pickpockets, swindlers, and forgers.

* James Simpson, Esq., of Edinburgh, whose remarks on this subject are contained in an appendix to a treatise on the Necessity of Popular Education. They exhibit a profound knowledge of human nature, and open views of penal legislation worthy the immediate attention of all law-makers.

"The *second* class of mankind are very numerous, those whose *animalism* is nearly as strong as in the first class, but whose moral and intellectual powers of restraint are so much greater, as to bring the tendencies to indulgence and forbearance almost to a balance. External circumstances, in such persons, turn the scale. In low life, uneducated, neglected, and destitute, they have often become criminal : in a more favorable condition of education and society, they have continued respectable ; but within the influence of bad example, they will be found sensual and often profligate, and they are always selfish and self-indulging. In them is the Scriptural want of earth to preserve the plant which springs up, from the withering action of the sun.

"The third class are the good ground, that produces in different degrees, but plentifully. They are those who, the apostle says, are 'a law unto themselves.' In them the animal propensities are sufficient for their legitimate ends ; but the decided predominance of intellect and moral feeling, as faculties of the mind, renders it nearly an impossibility that the inferior tendencies should ever master them so far as to impel them to commit crime. It is *physically* possible for such men to rob, or steal, or torture, or murder, but it is *morally* impossible ; and they would attempt any physical difficulty in preference. They enjoy strong moral and intellectual perceptions. Their passions, sometimes vigorous, are reigned by their higher feelings. They feel the law written in their heart, by the same finger that graved it on tables of stone. Instead of all their aspirations and aims being selfish, they have time, and thought, and exertion, and money, to spare for their fellow-creatures ; and are made happy by the extension of the virtuous enjoyment of life throughout the world."*

Taking this classification of mankind for our guide, which, though it may admit of some modification in particular cases, is certainly founded in nature, and in the main correct, we may remark that offenders will always be found either in the first or

* Simpson on National Education, Appendix, on "Efficient Protection from Crime."—p. 179, Amer. Ed.

second class. To these two classes, therefore, the effect of penal regulations must be expected to reach. It is expected that the terror of punishment will have a stronger effect upon these, than the impulse of their own evil passions. Let us pursue the reasoning of the enlightened writer above quoted, upon this subject also.

That the certainty and severity of punishment will secure from the commission of crime "the *first* class of human beings above distinguished," says our author, "is utterly and demonstrably false." "It is admitted that law makers are right when they hold that the fear of punishment has a powerful operation as a motive, on men whose moral balance is *even*, and trembles between offending and abstaining. We hear this often and much insisted upon as a very important effect of the example of punishment; and we recognize the men alluded to, as the *second* class of human beings. But it will afterwards be shown that a much milder and more judicious treatment of real criminals, that is, men of the *first* mentioned class, will furnish *sufficient* example to the *second* class, or the class of waverers. It is more important to establish the fact that on the *first* class, or those whose preponderating tendency is to crime, whose intellect is the barren way-side, and moral constitution is a wilderness of thorns, the example of punishment has little or no effect at all; and this is one reason why crimes do not diminish, either in number or aggravation. It is a fundamental error which not only prevails in ordinary life, but is at the root of all the discrepancies and contrarities of metaphysical systems, that every one conceives his own mind a type of the species, and believes that all other men feel and think and are moved just as he is. The law-maker's mind being probably of the last or third class—at least it ought to be—he feels that public disgrace and punishment would operate as most effectual motives to deter him from crime, were he by any possibility in danger of falling into it; and he never doubts that to all minds they must present the same effectual warning. But the minds of men of the *first* class are constituted quite differently. They are impelled by much stronger animal propensities,

the abuses of which are essentially vice and crime,—and they have much weaker restraining powers, moral and intellectual. To men of such minds, the state of society holds out constant temptations; the circle they move in laughs at threats and punishments; their intellects are confused as well as their passions aggravated, by the constant use, in most of them, of intoxicating liquors; they see no consequences till they fall upon them, have no anticipations of punishment, and never doubt their own unvarying good fortune and powers of evasion and concealment. With all this, should we wonder that they so seldom connect the idea of punishment with their actions, and that they proceed in their course of evil practices without ever dreaming of applying the punishment of even their accomplices in crime, as examples to themselves?" *

"Now minds so constituted ought not to be judged of in the same manner as those of a more moral and intellectual constitution. Justice demands a large allowance for their unfortunate constitution and not less unhappy circumstances; and above all, observing that punishment, however severe, does not operate upon them as example, it would consider whether there are not means at once more just and effectual, of protecting society from the acts of these, its dangerous and reckless members." †

The remarks just quoted are deserving of great consideration. They who most carefully study the nature of man, will most readily grant that violent criminals are usually found in the first class, and the same careful study will also lead to the conclusion that punishment, however severe, has but little influence upon such minds. They neither dread its certainty, nor shrink from its severity. Their lives are constantly in their hands. The very danger is a pleasurable excitement.

* "The Rev. Mr. Roberts states that he conversed with 167 convicts under sentence of death, and found that 164 of them had witnessed executions."

† We cannot take leave of this author from which we have so largely extracted, without most earnestly commending his work to the perusal of all who admire sound principles, eloquently delivered. He, too, is a friend of Peace.

Every-day, safe iniquity, is beneath their daring. A bold defiance of human laws, and the most hardened resistance to the institutions of society, is the field in which their propensities find the most gratifying exercise; and the gratification is intense in proportion to the danger. The fear of death has a very slight influence upon them. "We must all come to this sooner or later," is their every-day maxim. Indeed, it may be doubted whether minds of this class would not prefer, in some cases, the speedy sacrifice of life, to a lingering and laborious confinement. The former, they may brace themselves to bear; the latter, to persons of their constitution, is the severest torment.

The second class, or those whose bad tendencies are balanced by moral sentiments and capacity, become guilty, not suddenly, but by degrees, and from the influence of circumstances. A defective education, vicious associates, extraordinary temptation, or violent provocation, turns the balance of their character against the cause of virtue, and hurries them away under the impulse of their animal nature.

Offenders of this class come slowly to the perpetration of offences which lead to the scaffold. They have much natural abhorrence of crime, and a keen natural sense of disgrace. In the outset of their career, the higher penalties of the law have little influence on their feelings, because they do not, at that stage, suppose it possible for them ever to advance so far in guilt as to fall within the range of those penalties. But as they advance in crime, they advance in hardihood. Success in the evasion of lighter inflictions, encourages the hope of escaping the heavier ones also. They at last become familiar with death itself, and the terrors it formerly awakened in their bosoms, no longer arise.

Yet persons of this class are seldom cool-blooded murderers. The great and final crime is usually committed in some paroxysm of rage, or extremity of danger, when reflection slumbers and conscience is not heard. Amid the distractions and hurry of such a moment, are the highest penalties of the law capable of making their influence felt? Does the robber, when his victim unexpectedly turns upon him, coolly submit to

be seized, from the fear that he may possibly be hanged? This is not human nature. If the beginnings of crime are not checked, you will in vain look to severe punishment for the prevention of its higher grades. The practised villain is equally insensible to all penalties. The dread of punishment is only felt in the earlier grades of vice. At the later stages of its progress, all threats and inflictions are equally unavailing.

And this is found to be the practical operation of several laws in foreign countries. Experience has shown that the punishment of death has no perceptible influence in restraining crimes. Where theft is a capital offence, the thief continues to steal beneath the very gallows, and amid the terrors of a public execution. The severest inflictions, the scourge, the gibbet, the gallows, are insufficient to counteract the vicious propensities of the trained villain. In England, within the last fourteen years, as it appears by a report of a select committee of the House of Commons, crimes have increased in the ratio of 24 to 10, that is, have more than *doubled*! If it be proved, then, by experience, under the most remarkable circumstances, that the fear of death does not deter from the commission of even smaller offences, can we reasonably rely on its efficacy in those extreme cases to which it is applied in this country? If the early impulses of a knavish disposition break over this final barrier, can we expect it to afford a firm protection against the unruly violence of the hardened villain? Vain hope! The foundations of social security must be laid on other principles. The community will in vain attempt to protect itself from desperate criminals by threats and severity. The true principle of protection must be applied at another point. First offences may be punished or threatened, with some hope of reformation or intimidation; but the awful catalogue of capital felonies will not be reduced by any direct means. The practice of society must undergo an entire revolution. It must seize upon and confine those who are dangerous to its peace, in the outset of their career, as soon as the first indications of their innate dispositions appear. And when offenders are once in the custody of the law, they must not be discharged until the fullest evi-

dence is obtained of their entire reformation. Thus great criminals will decline in numbers, for their stock will be cut off at the roots. A temporary punishment of a beginner in vice only aggravates his disposition to evil. But if every transgression of the law be regarded as an alarming indication of future villainy, and the most efficient measures be, in the first instance, adopted to prevent the further progress of the offender; if he be taken into custody and there detained until he exhibits indisputable evidence of radical reformation, be the time of his confinement ever so long, the community would, in most instances, avoid those fearful results which flow from our present system.*

But it is not so much our present object to propose what legal penalties may be substituted for *Death*, as to show the inefficacy of that penalty. And the course of our remarks goes to show that its failure is not only proved by long experiment, but may be reasonably accounted for by a just view of the constitution of society.

Penal enactments are intended to operate upon the *vill* and *passions* of mankind. Now we contend that these cannot be moulded by threats or controlled by fear; especially when they have, by long exercise, acquired an unruly ascendancy in the breast. Punishment appeals to the feeling of fear; but fear itself is a weaker sentiment in many minds, than avarice, ambition, envy and hate. All the animal passions unite their tremendous energies in prompting to a great crime,—is it reasonable to expect they can be successfully resisted by one single element—the element of fear?—especially when long practice in dangerous villainy has stunned the sense of terror, and fortified the hardy traits of character?

It is only by long discipline, by restraint, cultivation and the development of antagonist principles that the vicious propensities can be successfully kept in restraint. If, then, necessary conditions have been neglected, in any individual, he will fall into crime, and the first instance of his transgression fully authorizes the community to place him in a course of training

* See these views further unfolded in Mr. Livingston's penal code for Louisiana, and in the work of Mr. Simpson already cited.

which will effectually restore the proper balance to his character, or if this be impossible, will at least, restrain the operation of his preponderating vices from harming the community. Nor is this an act of cruelty. He is restrained precisely on the grounds that lead to the confinement of the insane man. It is not by way of punishment to him, but of security to ourselves. The infliction of death in either case, would be an expeditious, cheap and sure means of relieving the community; and as regards example, we believe it would be nearly as effectual in checking *insanity* as it now is in checking *crime*. But in the case of the lunatic, it would be most revolting to the feelings of humanity; and the time we apprehend will come, when it will be equally revolting as regards the criminal. So far forth as society is concerned, they are to be put on nearly the same footing. In the eye of omniscient justice there must be indeed an inconceivable difference; but the effects of insanity and of crime upon the community, and the treatment humanity and sound philosophy would dictate in either case, are strongly analogous.

But our limits will not permit us further to expatiate on this view of the subject; a view for which, as we are fully aware, the public mind is not yet prepared. But the principle we apply to this particular case, reaches many other interesting subjects connected with the improvement of public morals. The efforts of reformists appear to us to begin too late in life. In the temperance reformation, in the eradication of the disposition to war, and in the restraint of all the animal and base propensities of human nature, successful effort must begin in early life. Then, the better dispositions may be developed, and the brute passions repressed. In the vigor of maturity, innate tendencies may sometimes be subdued and controlled; but to obtain over them a complete mastery, after the man is full grown, is a difficult, we may almost say an impossible undertaking.

If the principles we have thus far urged, be founded in truth; if a true view of the nature of man, and of the constitution of society, leads to the conclusion that the fear of death is ineffectual in restraining crime, and if this conclusion

is fortified by long experience at home and abroad ; we have presented some reasons against the continuance of this punishment, which ought to prevail in effecting its abolition.

We shall venture to subjoin some other considerations of a less general character which may aid in the establishment of our main conclusion.

In the dark ages of ignorant antiquity, legislators existed, who, we are told, punished all offences with death. But such barbarous institutions were soon modified by the influence of intelligence and civilization, and with the progress of these, the amelioration of punishments has always kept pace. England has been constantly reducing the black list of offences which are felony by her laws, and in many countries on the European continent, a far greater progress has been made in striking the lines of cruelty from the penal code.*

Is there not, then, some connection between the progress of amelioration in the penal code and the general advancement of nations in civilization ? If so, have we arrived at the consummation of improvement in this particular ? Are there no traces of the severity of barbarous ages still discoverable in our institutions ? Is ancient prejudice entirely cast off, and ancient misapprehensions of man's nature entirely eradicated ? It is indeed a vast step in the course of humanity to have reduced the horrid barbarities which were formerly inflicted upon all offences, down to one simple penalty, and to have confined that penalty to less than a dozen crimes. But do its limits admit of no further circumscription ? In the progress already made, see we no cause of conjecture that posterity may improve upon us ? Is it not indeed, a strong presumption that

* "Grizot, De la peine de mort." This essay, of which the last edition was printed in 1828, reprobates the infliction of death for political offences.

In 1832, was published at Paris, A Treatise "Du Maintien de la Peine De mort, Par M. F. A. Silueta : " a Spanish gentleman we suppose, as he is the author of a Spanish History of the Roman Empire before Augustus. This writer defends the punishment of death for offences of a certain class : but with a tone of calmness and humanity which do him credit. But neither Grizot nor Silueta have developed the true principles of penal legislation.

the infliction of *Death* may be altogether renounced, since it has already been found useless in the whole range of crimes to which it formerly applied, with a very few exceptions? We cannot but think that this train of argument presents a strong, *a priori* presumption against the punishment of *Death* in any case.

It is a penalty derived from ages of barbarism and depravity; it has no stamp of civilization or mercy; it has prevailed most where vice and ignorance were most rife; it has shrunk before the progress of religion and intelligence. May we not conclude that it will finally be driven from the face of the earth by a more thorough knowledge of the rights and duties of social life? Like the barbarous custom of war it has but one intrenchment behind which to shelter itself; that intrenchment is *necessity*. No humane mind defends either practice on any other ground. Both practices are quivering beneath the morning ray of the Christian religion, and must certainly melt out of sight amid its meridian glow, and the *necessity* which is pleaded in excuse of both, will, we trust, be found to consist either of passion or prejudice. It is the necessity which springs from man's unenlightened will, but has no existence in the real nature of things, or in the order of the universe.

In the infliction of *Death* as a punishment for different offences, and different *degrees* of the same offence, there is a palpable injustice which ought to have attracted greater notice. If the robbery of the mail be punished with death, surely treason and piracy—far more enormous offences—deserve a more severe infliction. If *Death* be a suitable punishment for a parricide, is it not too severe for the murder of a stranger? To whatever single offence you may show its correspondence, you must by that very showing demonstrate its want of exact fitness for all others. The laws of the United States annex death as a punishment to nine several offences; but no two of these are exactly of the same grade in enormity. At the utmost, then, death, being a single punishment, can fit but a single offence. If it fit the lowest degree of these crimes, you must superadd for the higher offences a severer punishment.

If death be the exact penalty for the highest enormity, you do injustice in connecting it with any inferior crime.

To pursue this argument a little more clearly, let us take in the broad range of capital offences, the single crime of *murder*, it being an offence to which, in popular estimation, death is eminently the corresponding infliction. The popular doctrine is that of the Jewish law, "whoso sheddeth man's blood, by man shall his blood be shed." And nothing is more common than to hear worthy men admit the impropriety of death in all cases except those in which death has been inflicted by the convict. The punishment is justified on the ground of its correspondence to the nature of the offence. "He has taken another's life," says the popular voice, "therefore he has *forfeited* his own."

Now, in the first place, the argument rests upon the principle of *retribution*, which we have already shewn to be wrong. The nature of the offence ought not to determine penalty, but its efficacy in future time is the only true test of its propriety. If death be the exact penalty for murder, then the whole "*lex talionis*" must, on the same principle, prevail throughout. An eye must be taken for an eye, a tooth for a tooth, and an exact amount of retaliatory suffering be in each case bestowed on each offender.

In the next place, the argument of diversity in guilt applies even within the varieties of a single crime. The offences which are embraced under the technical name of *murder*, vary so greatly in atrocity and in their injurious tendencies, as to demand a corresponding variety of penalties. In the words of Dr. Spurzheim, "A man who intentionally kills his benefactor; another who kills one who has excited his jealousy and disturbed the peace of his family; the inexperienced girl who, in a moment of despair, destroys her offspring, the cause of her misery for life; the horrid monster who strangles his old father to enjoy his inheritance the sooner; the prostitute who assassinates the companions of her debauchery; and the highwayman whose whole life is only a succession of robberies and murders, who spreads desolation and devastation in whole dis-

tricts,—cannot be considered as equally guilty. Either therefore the minor offences should be visited with a less punishment than death, or to preserve consistency, the greater offences should be followed by death aggravated by increased horrors : a proposition at which even the sanguinary spirit of legislation would revolt.”*

We shall say little of the demoralizing tendency of the public infliction of *Death*. The excitement of such a stimulus is of the same kind as that which glutted the Roman populace at the sanguinary and beastly shows of the arena. It is felt to be so dreadful that the hideous operation, in this State and in many others, is screened from public observation. Does this not prove, that, so far as the terror of the penalty extends, its influence is bad on the community?

And what is there in the private infliction of death, which excels in its effects, perpetual incarceration? The public disgrace and exposure are removed : the scene can only be present to the imagination. The public may indeed know that on such a day and such an hour, a miserable, helpless wretch, already in the power of justice, prostrate and unresisting, is to be coolly strangled by the officers of justice, in his solitary cell!

Yet the abolition of *public* executions is a long step towards their entire annihilation. The tone of public feeling which would no longer endure these revolting scenes in public, will soon correct their transaction in private. For the very fact of removing them from the public gaze, is an admission of the bad tendency of the spectacle; and by making them private, that terror of example on which they now rest for support, is seriously impaired. The reason being thus chiefly removed, the practice cannot long be sustained.

* Spurzheim on Education, p. 291.

NOTE.—The Connecticut Peace Society is pledged to neither view of the question of Capital Punishment. It is simply silent—taking no ground. Nor is this journal devoted to any exclusive view of this subject. For ourselves, personally, though we think the abolition of capital punishment desirable and expedient, yet there are some things advanced in the foregoing which we should wish to qualify; we have however admitted it as an argumentative discussion of a subject of great importance to community, and of great interest

to the feelings of the humane, and which has begun in this country, and extensively on the continent of Europe, to engage the attention of jurists, statesmen, and philanthropists in general. Our pages will ever be chiefly taken up with one great object—the promotion of international peace; but in regard to the few *collateral* subjects—like the present—on which an article may occasionally appear, we shall be more concerned that the tone and spirit be unexceptionable, than with the side of the question which is taken: believing that truth will always be elicited by fair discussion.—*Editor Advocate*.

ARTICLE II.

GRIMKE'S DYMOND ON WAR.

BY THE EDITOR.

An Inquiry into the Accordancy of War with the Principles of Christianity; and an Examination of the Philosophical Reasoning by which it is defended; with Observations on the Causes of War and some of its Effects; by Jonathan Dymond. With a Dedication to Sunday School Teachers and Scholars, and Notes, by Thomas Smith Grimke, of Charleston, South Carolina. Together with an Appendix, containing Extracts from several of his writings, vindicating or illustrating the Principles of Peace. Philadelphia, 1834, 12mo. pp. 300.

WE announced this work several months since, as in the course of preparation. Little did we then think it would be the last contribution to the cause of peace from the eminent and excellent editor. It was, however, almost his last labor for the good of mankind. In September last, Mr. Grimke visited Philadelphia, and having made arrangements for the publication of this volume, departed on a visit to Ohio, intending to return again to Philadelphia. He delivered several addresses and lectures on the benevolent objects of the day, at different places in Ohio, and was on his return from Cincinnati to Columbus, when he was attacked by the cholera, and died after an illness of twelve hours, on the 12th of October. Meantime